SUPREME COURT OF THE UNITED STATES.

No. 470.—October Term, 1925.

The United States, Appellant, *vs.* John J. Mitchell et al., as Executors, etc.	Appeal from the Court of Claims.

[April 12, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

November 28, 1918, Dellora R. Gates, a resident of Texas, died testate; and, January 6, 1919, the County Court of Jefferson County granted letters testamentary to appellees. The federal estate tax accrued one year after her death; and, November 26, 1919, the executors made a return showing $2,927,762.64 due the United States under the Revenue Act of 1916.[1] They did not pay any part of the tax in 1919, but paid $1,000,000 February 25, 1920, and the balance May 27, of that year. Under the Revenue Act of 1918,[2] the executors, March 14, 1920, made an income tax return for the estate for 1919, showing a balance due of $905,225.73. If the estate tax had been deducted there would have been no taxable income for that year. In 1919, the executors paid an inheritance tax of $357,739.34, which was imposed and became due in that year under the laws of Texas.[3] If that amount had been deducted, the income tax of the estate for that year would have been reduced by $261,149.72. When the return was made, the rulings and regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury did not permit the deduction of the federal estate tax or the state inheritance tax; and for that reason the executors did not claim that either should be deducted, and

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[1] Section 201, Act of September 8, 1916, c. 463, Title II, 39 Stat. 756, 777, as amended March 3, 1917, c. 159, Title III, 39 Stat. 1000, 1002, and October 3, 1917, c. 63, Title IX, 40 Stat. 300, 324.

[2] Act of February 4, 1919, c. 18, Title II, §§ 210, 214, 219, 40 Stat. 1057, 1062, 1067, 1071.

[3] Vernon's Sayles' Texas Civil Statutes, 1914 Ed., as amended by c. 166, Laws of 1917, Art. 7487-7502.

paid the amount shown by the return. After the decision of th court in *United States* v. *Woodward* (1921), 256 U. S. 632, tl executors filed a claim for refund which was denied. The Burea of Internal Revenue offered to allow them to deduct the esta tax paid in 1920 from gross income, in calculating the income ta on the estate, for that year. The executors refused to do so an brought this action in which they seek to recover the full amour of the 1919 income tax paid. And, in the event that the estat tax shall be held not deductible, they seek to recover $261,149.7 the amount by which the income tax would have been lessened i the Texas inheritance tax paid in that year had been deducte The Court of Claims held the estate tax deductible, and gav judgment for the full amount.

It is established that, in calculating the income tax on an estat during administration under the Revenue Act of 1918, § 214(a) (3), federal estate taxes are deductible. *United States* v. *Wood ward, supra.* But the question presented by this case is whethe in calculating the income tax for 1919, the executors were en titled to deduct from the gross income actually received in tha year the estate tax which was not paid until 1920. The executor maintain that under § 214(a) (3) estate taxes are deductible i paid or if accrued within the taxable year; and that the estat tax, accruing in 1919 and paid in 1920, was deductible from gros income actually received in 1919. When regard is had to other pr visions of the Act, it is clear that this contention is not admissibl Section 200 declares that "paid" means "paid or accrued," an that the phrase "paid or accrued" shall be construed accordin to the method of accounting upon the basis on which the net ir come is computed under § 212. And § 212 provides that net incom shall be computed on the basis of the taxpayer's annual accoun ing period in accordance with the method of accounting regularl employed in keeping the books of the taxpayer (*United States* *Anderson*, 269 U. S. —); but if no such method has been en ployed, or if the method employed does not reflect the ir come, the computation shall be made upon a basis and in manner that, in the opinion of the Commissioner, does clearl reflect the income. The return shows that it was made on th basis of income actually received in 1919. This indicates that th accounts were kept on the basis of actual receipts and disburs ments, and there is nothing in the record to show that any oth

method was employed. The burden is on the executors to establish the invalidity of the tax. *United States* v. *Anderson, supra.* They have not shown that their books were kept on the accrual basis. Assuming, as we must, that the accounts of the estate were kept on the basis of actual receipts and disbursements, the executors were required to make return on that basis. Notwithstanding the option given taxpayers, it is the purpose of the Act to require returns that clearly reflect taxable income. That purpose will not be accomplished unless income received and deductible disbursements made are treated consistently. It was not the purpose of the Act to permit gross income actually received to be diminished by taxes or other deductible items disbursed in a later year, even if accrued in the taxable year. It is a reasonable construction of the law that the same method be applied to both sides of the account.

Appellees contend that *United States* v. *Woodward, supra,* governs this case. The provisions of the Revenue Act of 1916 and of the Revenue Act of 1918 which are here involved were considered in that case. The cases are much alike. Woodward died December 15, 1917, and the estate tax became due one year later, but it was not paid until February 8, 1919. It may be assumed that the return for 1918 included only the income actually received in that year. The rules and regulations then in force did not permit the deduction of the estate tax. If that deduction had been made there would have been no taxable income. The executors paid the tax under duress, and brought suit for the amount paid. The Court of Claims held them entitled to recover, and this court affirmed the judgment. The question considered and decided was whether in ascertaining net taxable income the estate tax was deductible. The opinion referred to the provision which imposes the tax upon incomes of estates and that part of § 214 which authorizes the deduction of "taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes," and, in discussing the clause defining the deductions permitted to be made, the court said (p. 634), "The words of its major clause are comprehensive and include every tax which is charged against the estate by the authority of the United States. The excepting clause specifically enumerates what is to be excepted. The implication from the latter is that the taxes which

it enumerates would be within the major clause were they not expressly excepted, and also that there was no purpose to except any others. Estate taxes were as well known at the time the provision was framed as the ones particularly excepted. . . . Thus their omission from the excepting clause means that Congress did not intend to except them. The Act of 1916 calls the estate tax a 'tax' and particularly denominates it an 'estate tax'. This court recently has recognized that it is a duty or excise and is imposed in the exertion of the taxing power of the United States. *New York Trust Co.* v. *Eisner, ante,* 345." The question decided concerned the character of the exaction; that is, whether the so-called federal "estate taxes" were "taxes" within the meaning of that word as used in the clause of § 214 quoted. The government did not contend that, if deductible at all, the estate taxes could not be deducted in that case because the return was made on the basis of income actually received in 1918, whereas the estate tax, accruing in that year, was not paid until 1919. That question was not presented to the court for decision, and no such question was considered or decided. It is not to be thought that a question not raised by counsel or discussed in the opinion of the court has been decided merely because it existed in the record and might have been raised and considered. *Webster* v. *Fall,* 266 U. S. 507, 511. The *Woodward* case does not support the contention that, where the estate income tax return is made on the basis of income actually received in the taxable year, there may be deducted the estate tax accruing in that year but paid in the following year.

It remains to be considered whether, in calculating the tax on the income of the estate, the inheritance tax imposed by the law of Texas and paid by appellees in 1919 is deductible from the gross income received in that year. That law provides that all property, which shall pass by will or by the laws of descent, shall upon passing to or for the use of any person (with certain exceptions) be subject to a tax for the benefit of the State. We are of opinion that, in respect of the matter under consideration, the Texas inheritance tax law cannot be distinguished from the New York transfer tax law; and that under *Keith* v. *Johnson,* decided this day, the executors are entitled to have the inheritance tax paid in 1919 deducted from the income of the estate received in that year.

Judgment reversed.